

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

SMITH & WESSON BRANDS, INC., SMITH &
WESSON SALES COMPANY, and SMITH &
WESSON INC.

Plaintiffs,

v.

GURBIR S. GREWAL, *in his official capacity as Attorney General of the State of New Jersey and*
NEW JERSEY DIVISION OF CONSUMER AFFAIRS

Defendants.

CIVIL ACTION

CASE NO. 2:20-CV-19047-KM-ESK

DECLARATION OF KYLE TENGWALL IN SUPPORT OF PLAINTIFFS' APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION

1. My name is Kyle Tengwall. I am currently employed by Smith & Wesson Brands, Inc. as Vice President, Marketing. I have been an employee of Smith & Wesson since June 19, 2020.

2. This declaration is submitted in support of Plaintiffs' Application for a Temporary Restraining Order and a Preliminary Injunction in the above-captioned matter. If called upon to testify as to the facts contained herein, I could do so capably and to the best of my knowledge.

I. Smith & Wesson's Business and Its Advocacy for Second Amendment Rights

3. Smith & Wesson Brands, Inc. is the parent corporation of Smith & Wesson Sales Company and Smith & Wesson, Inc. Smith & Wesson Brands, Inc. is a Nevada corporation, headquartered in Springfield, Massachusetts, since 1852. I refer to these entities collectively below as "Smith & Wesson."

4. Since its inception, Smith & Wesson has invented and manufactured firearms that are noted for their innovative design, high quality, and reliability.

5. Smith & Wesson is not a firearms retailer. Instead, Smith & Wesson sells to a select group of distributors, and those distributors, if they choose, sell to New Jersey retailers who, in turn, sell to New Jersey residents.

6. Throughout its history, Smith & Wesson has been committed to advocating for the responsible exercise of the Second Amendment right to bear arms, and consequently has spoken out regarding the need for training and the safe and responsible handling of firearms.

7. To that end, Smith & Wesson supports gun safety and responsible gun ownership initiatives, both directly and indirectly.

8. These initiatives include the company's own #GUNSMARTS program, which offers gun usage and storage safety tips and other gun safety videos. These videos and other media can be readily found on the company's website and social media sites, and on YouTube and other internet outlets.

9. Smith & Wesson also participates in Project ChildSafe (which helps protect children from gun accidents), Don't Lie for the Other Guy™ (preventing straw purchases) and Operation Secure Store® (safely securing firearms in the home). These initiatives are sponsored by the National Shooting Sports Foundation ("NSSF"), which is the trade association for the firearms industry and which provides some of the most effective programs in the nation for promoting firearm safety.

10. In addition, the user manuals for Smith & Wesson's firearms contain prominent safety warnings and encourage owners to seek formal training before using the product.

11. Smith & Wesson also is an industry leader in its outspoken advocacy for Second Amendment rights and its support for prominent Second Amendment advocacy groups.

12. To take one example, Smith & Wesson’s public pronouncements on Second Amendment rights are encapsulated in its February 2019 report to its shareholders. In that report, Smith & Wesson adopted its “Principles for Responsible Engagement” (“Principles”). A true and correct copy of the February 2019 shareholder report containing the Principles is attached as Exhibit 1.

13. These Principles state expressly that, “[a]s a manufacturer of firearms for the lawful use by citizens,” Smith & Wesson “recognizes its responsibility to its shareholders, its employees, and its customers to defend the Second Amendment.” Ex. 1 at A-1.

14. The Principles commit to “support only those regulatory proposals that are consistent with the Second Amendment and that deliver demonstrable societal benefits.” Ex. 1 at A-1.

15. The Principles articulate the company’s position that the Supreme Court’s 2008 ruling in *District of Columbia v. Heller*, “confirming the broad rights of citizens to possess firearms” is “settled law[.]” Ex. 1 at A-1.

16. Finally, the Principles expressly articulate Smith & Wesson’s commitment to “engag[ing] in advocacy through education, communication, and public affairs efforts on behalf of its shareholders, employees, and customers” who oppose “the imposition of onerous and unnecessary regulations adversely impacting citizens’ Second Amendment rights.” Ex. 1 at A-1.

II. The Subpoena Is Causing Harm to Smith & Wesson.

17. New Jersey Attorney General Gurbir S. Grewal served Smith & Wesson with an administrative subpoena on October 14, 2020 (the “Subpoena”). A true and correct copy of the Subpoena is attached as Exhibit 2.

18. Many of the requests in the Subpoena request documents related to opinions allegedly expressed by Smith & Wesson, including (a) “[w]hether the concealed carry of a Firearm enhances one's lifestyle”; (b) [w]hether it is safer to confront a perceived threat by drawing a Firearm rather than seeking to move away from and avoid the source of the perceived threat”; and [c] “[w]hether having a Smith & Wesson Firearm or other Firearm makes a home safer.” Ex. 2 at 9.

19. Given that Smith & Wesson’s constitutionally-protected opinion speech is being targeted by the Subpoena, as well as the possibility of an enforcement action under the Consumer Fraud Act for expressing those opinions, Smith & Wesson is concerned that it cannot freely express its ideas in the political and commercial marketplace.

20. To take just one example, Smith & Wesson will be subject to varying and arbitrary standards for what constitutes “fraud” in a given jurisdiction, and its communications and marketing professionals will have to tailor its political and commercial messages out of concern that the aforementioned varying and arbitrary standards will result in prosecution and harassment by the Attorney General for entirely lawful conduct.

21. Forcing Smith & Wesson to produce documents pursuant to the Subpoena will only compound the problem. It will send a clear signal to Smith & Wesson that it will be subject to legal process and possible enforcement actions by the Attorney General and other government

authorities for its protected speech. That will most certainly discourage Smith & Wesson from expressing its views.

22. Additionally, responding to and litigating issues arising from the subpoena forces Smith & Wesson to divert financial and personnel resources from its ordinary course operations, as well as the time and attention of its board of directors, senior executives, and other personnel from running its business in order to preserve its First Amendment-protected speech and Second Amendment-protected activities, among other constitutional and statutory rights. These expenditures are, and will continue to be, substantial.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

Executed this 30th day of July 2021



Kyle Tengwall